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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,937	11/17/2005	Andreas Lendlein	MNE 108	3650
23579 7590 02/20/2007 PATREA L. PABST PABST PATENT GROUP LLP 400 COLONY SQUARE, SUITE 1200 1201 PEACHTREE STREET ATLANTA, GA 30361			EXAMINER ZEMEL, IRINA SOPJIA	
			ART UNIT 1711	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/20/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/534,937

Applicant(s)

LENDLEIN ET AL.

Examiner

Irina S. Zemel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 93/17669, Kim et al, or 5,854,382 to Loomis.

Claims 1-3 and 5-6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sawhey.

The rejection of claims over the cited references stands as per reasons of record. Insofar as the newly introduced limitation to the network having two glass transition temperatures, it is reasonable believed that this limitation is inherently met by the disclosed networks (prior to hydration) as obtained from the block-copolymers having substantially the same chemical structure and molecular weights, and as obtained by substantially the same crosslinking procedure as the networks disclosed in the instant specification. The burden is shifted to the applicants to provide factual evidence to the contrary.

It is also noted that claim 1 does not define a block copolymer as claimed in claim 6.

### ***Response to Arguments***

Applicant's arguments filed 12-11-2006 have been fully considered but they are not persuasive. The applicants argument with respect to the outstanding rejections over each and all of the references are directed to the allegation that neither one of the reference discloses a network having two glass transition temperatures and that the disclosed network do not have a permanent shape and at least one temporary shape.

With respect that the disclosed networks do not exhibit the claimed two glass transition temperatures, Tg's, the applicant rely on the disclosure of Sawhey. The applicants state that the Figure 4 of the Sawhey shows that the example exhibit only one Tg. This argument is not convincing. First of all, the DSC of the sample (hydrated), i.e., 18.5K2 does not show any Tg's. From what the examiner can see on the Figure 4, none of the two peaks exemplifies a glass transition endotherm. The reason being is that the sample, that probably has only one Tg, has a Tg way below the starting scanning temperature. The sample has a very long PEG block (which long PEG block of molecular weight above 18K will have Tg below -15 C). In this regard, the applicants are requested to provide detailed explanation what is being characterized by them as a "single Tg", as none of the peaks in the figure can be characterized as TG transition in a conventionally accepted meaning as Tg transitions do NOT exhibit a distinct peak on DSC.

Secondly, the short blocks of ester (DP of only 2.5, which, by the way is a glycolide block, not lactide block) will, most likely, not form a separate phase, and, thus, not exhibit a separate Tg. However, the reference exemplifies other block copolymers having long blocks of both ester and ether, such as 1K5 and 1K10, which will exhibit two Tg's as having incompatible blocks of comparable length which will phase separate and, thus, exhibit two distinct Tg's. Similarly, the other references disclose networks obtained from relatively long blocks of esters and ethers that inherently phase separate and exhibit two distinct phases with two distinct sets of properties, such as separate Tg's. With respect to the shapes of the disclosed networks, it is true that the references do not address the possible shapes of the networks (prior to water absorption). However, just because the references may be silent to any of the properties of the disclosed products, does not mean that the claimed property is not inherently exhibited by the disclosed products. In the instant case, the references disclose substantially identical products as to the products disclosed in the instant application. The references, as discussed above, disclose networks that are obtained from the block-copolymers having substantially the same chemical structure and molecular weights, and as obtained by substantially the same crosslinking procedure as the networks disclosed in the instant specification. It is not seen how those products can have different properties. Mere allegation that the disclosed products do not inherently exhibit the claimed properties is not enough to rebut the outstanding rejection. The examiner met her burden for providing reasons as to why it is reasonable believed that the claimed properties are inherently met by the disclosed products. In the

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absence of factual evidence to the contrary, it is believed that the claimed limitations are, indeed met by the disclosed products.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

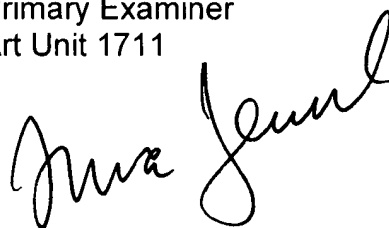
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Irina S. Zemel  
Primary Examiner  
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A handwritten signature in black ink, appearing to read 'Irina Zemel', written in a cursive style.

ISZ